

FAIR PRACTICES IN AUTOMOTIVE PRODUCTS ACT

SEPTEMBER 21, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means,
submitted the following

ADVERSE REPORT

[To accompany H.R. 1234]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1234) having considered the same, report unfavorably thereon, and recommend that the bill do not pass.

BACKGROUND

H.R. 1234, The Fair Practices in Automotive Products Act, commonly known as the domestic content bill, was introduced on February 3, 1983, and referred concurrently to the Committee on Energy and Commerce and the Committee on Ways and Means. The Committee on Energy and Commerce favorably reported H.R. 1234 with an amendment in the nature of a substitute on June 30, 1983. This substitute contained several amendments to the bill as introduced.

During the 97th Congress, the Subcommittee on Trade held nearly two weeks of hearings with an extensive list of witnesses on H.R. 5133, a similar domestic content proposal. H.R. 5133 passed the House of Representatives in December 1982, but was not considered by the Senate. Because it had held recent extensive hearings on the issues involved, the Subcommittee requested written comments on H.R. 1234 for new or additional views from all witnesses heard during the 97th Congress and received oral testimony from the Administration and major private sector interests. The responses received thus far indicate that many of those witnesses are even more forceful in their opposition today.

H.R. 1234 as introduced, not the Committee on Energy and Commerce amended substitute, was referred to and reported adversely by the Committee. However, most of the comments in this report also apply to the substitute; this report points out the serious problems

that the Committee on Energy and Commerce amendments would create for U.S. trade policy, the automotive industry, and the U.S. economy in general.

H.R. 1234, as introduced

The bill establishes minimum domestic content requirements for all vehicle manufacturers who sell more than 100,000 motor vehicles (i.e., three- or four-wheeled roadway vehicles which weigh 10,000 pounds or less) each year. Domestic content requirements would be phased in over a 3-year period beginning with model year 1985. The level of domestic content required for a manufacturer would increase with the volume of its sales in the United States. For each model year after 1986, the minimum domestic content percentage for a vehicle manufacturer selling between 100,000 and 900,000 would be its annual U.S. sales divided by 10,000; any vehicle manufacturer selling over 900,000 units would be subject to a minimum domestic content requirement of 90 percent. The actual domestic content ratio achieved by a manufacturer is calculated by a formula that takes the total production cost of automotive products (vehicles and parts) sold by the manufacturer in the United States during the year (i.e., wholesale price to dealers) plus export value (i.e., f.o.b. price of automotive products manufactured in the U.S. and exported) minus value of imports (i.e., total value for customs purposes of all automotive products imported) divided by total production costs.

If the Secretary of Transportation, after notice and hearing, finds that a manufacturer has not met its minimum domestic content requirements for any model year, the Secretary shall issue an order limiting the manufacturer's imports for the next 12 months. Imports for that manufacturer shall be reduced by the same percentage by which the manufacturer failed to meet its required domestic content levels.

All manufacturers that produce more than 100,000 vehicles for sale in the United States are required to establish and maintain records on the production and sale of automotive products and the Secretary is granted authority to obtain such data in the same manner as under the Motor Vehicle Information and Cost Savings Act, section 505. Within one year of enactment, the Secretary and the Federal Trade Commission shall jointly undertake an investigation, and submit to Congress a report, regarding practices and policies of vehicle manufacturers that are used to persuade dealers to favor foreign-made rather than domestic replacement parts.

The Committee on Energy and Commerce substitute

The Committee substitute changed the name of the bill to "Fair Practices and Procedures in Automotive Products Act of 1983." A Congressional "finding" was added that "automotive products are being imported in such increased quantities and under such conditions as to cause, or threaten to cause, serious injury to the domestic manufacturers of like or directly competitive automotive products. . . ." The Committee also added a Congressional "disclaimer" that it is the intent of Congress that the Act shall not be deemed to modify or amend the terms or conditions of any international treaty,

convention, or agreement to which the U.S. is a party, including treaties, conventions, or agreements that provide for resolution of conflicts between the parties.

The Committee on Energy and Commerce also added a provision establishing a domestic auto industry "Advisory Council" appointed by the President from nominees submitted by the Speaker of the House and the Majority Leader of the Senate. The Advisory Council is to consist of four representatives of domestic auto company management, five representatives of organized labor, one representative of U.S. parts manufacturers, and three consumer representatives. The Council shall assist the Secretary of Transportation in formulating a strategy to increase domestic production of automobiles, which shall be submitted to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation within one year.

The Committee on Energy and Commerce provided for two additional studies. The first, to be conducted by the Secretary and the Federal Trade Commission (FTC), shall review the general effectiveness of the Act and its impact on retail prices to consumers, availability and choice of models, imports, balance of auto trade, port employment, foreign auto investment in the U.S., and U.S. exports. That report is due within three years of enactment. The second study, also to be undertaken jointly by the FTC and the Secretary and due within 12 months, shall assess the impact of the bill on auto dealerships, including import dealerships.

COMMITTEE ACTION

The Subcommittee on Trade held public hearings on September 15, 1983, on H.R. 1234. The Subcommittee received testimony from Administration officials, organized labor, farm organizations, importers, and The Honorable Richard L. Ottinger, M. C. Representatives of the UAW, the AFL-CIO, and Congressman Ottinger testified in favor of the bill and the substitute reported by the Committee on Energy and Commerce. The Administration, the National Grange, and various importer associations testified in opposition to the bill. Statements for the record have been received from the Big Three auto manufacturers, the Congressional Budget Office, the U.S. Department of State, and others.

On September 15, 1983, the Subcommittee on Trade ordered H.R. 1234 reported adversely to the Committee on Ways and Means by a recorded vote of 10 ayes and 3 nays. On September 20, the Committee on Ways and Means ordered H.R. 1234 reported adversely to the House by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 states that this Act may be cited as the "Fair Practices in Automotive Products Act."

Section 2. Purpose

Section 2 describes the purpose of the Act as encouraging the production in the United States by American workers of automotive products which are sold or distributed in interstate commerce.

Section 3. Definitions

Section 3 defines the terms used in the Act and establishes requirements regarding the determination of the added domestic value achieved by a vehicle manufacturer.

Terms defined include: automotive products, added domestic value, domestic content ratio, entered, model year, motor vehicle, production costs, Secretary-DOT, and vehicle manufacturer.

Section 4. Domestic content ratios for model year 1985 and thereafter

Section 4 establishes minimum domestic content ratios for vehicle manufacturers for each model year beginning after January 1, 1984.

Subsection (a) provides that the minimum domestic content ratio for a vehicle manufacturer shall not be less than the higher of (1) the domestic content ratio achieved by the vehicle manufacturer in model year 1984 reduced by 10 percent; or (2) the applicable minimum content ratio specified on an increasing scale for model years 1985, 1986, and for each model year after 1986, based on the number of motor vehicles produced by the manufacturer and sold in the United States during such year:

Number of vehicles produced and sold in United States	Minimum domestic content ratio
Not over 100,000:	
1985	0
1986	0
Each year after 1986	0
Over 100,000 to 900,000:	
1985	(1)
1986	(2)
Each year after 1986	(3)
Over 900,000:	
1985	30
1986	60
Each year after 1986	90

¹ Number sold divided by 30,000.

² Number sold divided by 15,000.

³ Number sold divided by 10,000.

Subsection (b) authorizes the Secretary to prescribe rules for allocating automotive products among vehicle manufacturers in certain circumstances.

Section 5. Information and reports

Subsection (a) requires that each vehicle manufacturer producing more than 100,000 vehicles a year maintain records and provide such information as the Secretary of Transportation by rule requires in order to implement and enforce the domestic content requirements.

Subsection (b) authorizes the Secretary to obtain information for these purposes from manufacturers, pursuant to the Secretary's authority under section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act, as in effect on the date of enactment of the Act. It further authorizes U.S. district court enforcement of actions by the

Secretary and provides for confidentiality of any information obtained and limited public disclosure in accordance with 5 U.S.C. § 552.

Subsection (c) requires the Secretary of Transportation to report annually on the domestic content ratio achieved by each vehicle manufacturer during each model year after January 1, 1984.

Section 6. Enforcement

Section 6 requires the Secretary to issue an order prohibiting a manufacturer from importing motor vehicles for 12 months if he finds, following notice and opportunity for a hearing, that the manufacturer fails to meet the minimum domestic content requirements. Imports for that manufacturer are to be reduced by the same percentage by which the manufacturer failed to meet the required level. The section provides for judicial review of such orders within 60 days. Any person who knowingly violates any other provision of the Act is liable for a civil penalty up to \$10,000.

Section 7. Study of discriminatory practices affecting domestic production of motor vehicle parts

Section 7 directs that within one year of enactment of this Act, the Secretary of Transportation and the Federal Trade Commission (FTC) shall jointly investigate and prepare a written report to Congress regarding the policies and practices of vehicle manufacturers that are used to persuade motor vehicle dealers, in choosing replacement parts from motor vehicles, to favor foreign-made parts over domestically produced. The report must include recommendations for administrative or legislative action to assure that domestic replacement part producers are accorded fair access to the U.S. market.

GENERAL STATEMENT

There are several important reasons for the Committee's adverse report of H.R. 1234.

Economic impact

First, estimates of the economic effects that the bill would produce in the U.S. economy alone represent good reason to oppose this legislation. During the 97th Congress, the Congressional Budget Office (CBO) thoroughly analyzed the economic effects of domestic content legislation (H.R. 5133) for the Committee (WMCP: 97-33). The Committee has received an updated version of CBO's analysis by way of a letter to Congressman Gibbons, Chairman of the Subcommittee on Trade, dated August 16, 1983. This update agreed with the 1982 CBO report and concluded that the negative economic effects of H.R. 1234—such as the impact of employment, output, and prices—would be substantially similar to those of H.R. 5133. It states, in part:

There are three principal reasons why legislation such as H.R. 1234 can affect the U.S. economy adversely. First, car prices in the U.S. would increase due to reduced competition. Second, by artificially shifting resources from one sector to another—in this case to auto production—it would tend to reduce efficiency throughout the economy. This in turn would increase the price of labor and capital for all industries, rais-

ing the prices of goods and services at the expense of U.S. consumers. Third, the dampening effect of the bill on world trade would reduce demand for U.S. exports, causing a reduction in output and employment in U.S. export industries.

The CBO had estimated last year that, by 1990, domestic content legislation would cause car prices to rise by nearly \$500, would cause the Gross National Product to be 0.1 percent lower, and would cause a net loss of about 67,000 jobs. In its letter, the CBO cites recent signs of recovery in the auto industry and states that "the potential net benefits to the industry given current conditions are smaller than when H.R. 5183 was considered, while the potential costs to the economy as a whole remain undiminished." CBO concludes that "even in the absence of retaliatory actions, the bill's net long term results would be negative since gains for the U.S. automotive industry would be more than outweighed by losses in other sectors of the economy."

Despite the UAW's contention that enactment of H.R. 1234 "would create or preserve more than a million jobs, including 193,000 auto jobs," by 1990, the Committee notes several studies of the bill which contradict these estimates. According to the CBO and the Department of Commerce, net employment effects throughout the economy would be negative and auto jobs would be created at the expense of workers in other industries. A study of H.R. 1234 by the respected Wharton Econometric Forecasting Associates of Philadelphia, Pennsylvania, which was submitted for the hearing record, concludes that actual employment gains in the U.S. auto industry would total only 2,000 workers in 1986, climbing to 58,000 by 1991. However, the Wharton study states that the net loss of jobs by 1991 would be nearly 365,000 jobs due to employment losses in other sectors.

The U.S. Department of Commerce reported to the Committee that there has been substantial improvements in the domestic auto industry this year: sales have risen over 16 percent, production is running 23 percent higher than last year, and the projection for total car sales for 1983 is about 9.3 million units, up from 8 million in 1982. Moreover, the number of U.S. autoworkers on indefinite layoff has fallen 125,000 from its peak of last year and as production continues at high levels, even more workers will be called back.

In his testimony before the Subcommittee on Trade, Commerce Under Secretary Robert Dederick noted that although the crisis in the U.S. auto industry has passed, domestic content legislation was "never the answer" to the problems that the industry experienced over the past three years. He added:

Local content is blatantly protectionist. It will temporarily insulate the auto industry from foreign competition, while preventing it from utilizing the lowest cost sources of supplies. Actions of this sort inevitably backfire, and though they may yield some short-term, minimal benefit for one sector of the economy, they adversely affect the economy as a whole.

Foreign investment

Secondly, with respect to the stated purpose of H.R. 1234—to encourage production in the United States of automotive products—the Committee believes that the bill would not provide the incentive for

foreign auto manufacturers to invest in the United States. In fact, based on testimony from CBO, the Commerce Department and the foreign companies themselves, the bill would actually be a disincentive to investment. The Committee notes, for example, that the very companies the bill is directed at—Nissan, Honda, and Volkswagen—have already made substantial investments in U.S. facilities. Since 1981, Honda has invested over \$250 million in a new automobile plant in Marysville, Ohio, which will employ about 2,000 workers. Nissan has constructed a \$660 million manufacturing facility in Smyrna, Tennessee, to produce light duty trucks. This is the largest single investment made by a Japanese company in the United States, and it is Nissan's largest investment outside of Japan.

Volkswagen of America (VWA) pointed out that the bill would reduce the company's flexibility in making rational business decisions. Unforeseen events such as a weakening of the dollar vis-a-vis the deutschmark could put VWA out of compliance with the local content requirements. Further, local content requirements would make it extremely difficult for VWA to expand U.S. production capacity of new models. American Honda Motor Company, Inc. told the Subcommittee that the bill would limit the company's ability to attain optimum efficiency and competitiveness. Further, foreseeable levels of domestic content in Honda's U.S.-produced cars over the next three years would not be sufficient to meet the required fleet-wide domestic content ratio.

Finally, the President of Nissan Motor Manufacturing Corporation U.S.A. was the most direct. He told the Subcommittee that if H.R. 5132 had been law when Nissan was considering its investment in the U.S., he doubted that the decision to establish their Tennessee plant would have ever been made. He further stated that not only would additional investment by Nissan not be the result of passing H.R. 5133, but that Nissan's project in Tennessee would be seriously jeopardized.

In its testimony last year, the CBO strongly stated that the bill would not encourage foreign investment in the United States:

It seems unlikely that Toyota and Nissan would shift sizable amounts of their production facilities to the United States, because these firms would probably suffer the loss of their current cost advantages. Accordingly, the practical effect of the bill for these producers would be the imposition of an import quota. The CBO analysis assumes that, by 1990, Toyota and Nissan would each be forced to limit their exports of autos to the United States to about 250,000 units.

Finally, the Commerce Department flatly stated at the Subcommittee hearings that the Japanese manufacturers will close their U.S. production facilities. The Department pointed out that while these companies have found U.S. investments attractive without local content restrictions, they would be hard put to justify their U.S. operations in the face of a local content law.

Trade impact

Thirdly, in the trade area, the adverse implications of passing H.R. 1234 for U.S. trade policy and the international trading system was clearly brought to the Committee's attention.

The Committee is concerned about the precedent that this bill would set for other industries and for use of existing U.S. trade laws. It must be clearly understood that H.R. 1234 is a bill that has been drafted primarily to legislate import relief for the automobile industry. It is a trade bill, not an employment or investment bill. Instead of following the route provided by existing trade laws and seeking import relief that would be acceptable under our international obligations, the bill seeks to circumvent all of the established processes. The Committee believes that such legislation would represent a serious blow to our existing system of trade laws.

Further, the Committee is very concerned that the type of import relief being sought—minimum local content requirements—would clearly violate the General Agreement on Tariffs and Trade (GATT). In fact, the U.S. Trade Representative testified that H.R. 1234, as introduced, would flatly violate Articles III and XI of the GATT which, respectively, prohibit local content requirements and quantitative restrictions. The bill would also be inconsistent with similar provisions in commercial treaties between the United States and most of its major trading partners. Specifically, the bill would also violate the U.S.-Canadian Automotive Products Agreement, which accords duty-free treatment to imports of motor vehicles and parts between the United States and Canada and provides for an open and integrated market. The bill would directly violate Article I of that Agreement which provides that each government shall undertake to avoid actions that could frustrate the objectives of the agreement.

The Committee on Energy and Commerce, in an attempt to make H.R. 1234 consistent with the Article XIX "escape clause" exception to the GATT prohibition on quantitative restrictions, adopted an amendment adding a Congressional "finding" that the conditions for import relief have been met (Section 2(a)). Despite this amendment, however, the Committee believes H.R. 1234 still violates the GATT. As Ambassador Brock testified before the Subcommittee, consistency with the GATT is not achieved simply by reciting the terms of Article XIX. The United States must show that increased imports cause or threaten serious injury to the domestic industry. Further, Article XIX limits import relief "to the extent and for such time as may be necessary to prevent or remedy such injury," namely relief is meant to be temporary and no more severe than the injury itself. H.R. 1234 is directly contrary to these principles by requiring the phase in of progressively more domestic protection and with no limit on its duration. Protection of this kind, which is permanent unless revoked by enactment of further legislation at some future date, is contrary to both the spirit and the letter of the GATT, constituting an unprecedented form of import relief.

Further, even if H.R. 1234 were somehow made legal with GATT Article XIX, it would remain inconsistent with the national treatment provisions of GATT Article III and would not be free from legal retaliation under the GATT. Article XIX expressly authorizes contracting parties affected by import relief actions to withdraw substantially equivalent concessions or other obligation. Other U.S. industries and their workers would bear the cost of H.R. 1234, either through loss of export sales resulting from retaliation or, alternative-

ly, from reduction of their import protection as payment of compensation.

The Deputy Secretary of State, Kenneth W. Dam, a recognized expert on the GATT, stated in his submission to the Subcommittee:

I can think of no greater danger to that system, however, than the application, by the most important GATT trading country, of a strict "local content" regime to a major sector such as automobiles. The negative impact on Canada and Japan—two of our major trading partners—would be enormous and extremely disruptive to their economies. Since the United States could not possibly offer compensation in other areas for the trade losses our partners would incur in the automotive sector, they would undoubtedly retaliate against our exports.

The potential loss of American jobs in our export industries under this legislation has prompted opposition to the bill from organizations and associations which represent a broad spectrum of business and agricultural interests. For example, the U.S. Department of Agriculture pointed out some of the consequences of potential retaliation by our key trading partners:

Overall, it is estimated that the loss of U.S. jobs would be in the 25,000-30,000 range for each \$1 billion in agricultural exports lost.

Japan is our largest single country market for farm products with the total reaching \$6.6 billion in 1981. It is our largest feed grain market and is one of the top markets for wheat and soybeans as well.

An estimated 1 of every 20 acres in the United States produces for the Japanese market; more area is planted for the Japanese market than in Japan itself.

This testimony indicates why many U.S. farm groups and agricultural exporters have strongly opposed the bill. These include the American Soybean Association, the National Association of Wheat Growers, the National Grange, the National Council of Farm Cooperatives, and the National Corn Growers Association. Major industrial business groups, such as the National Association of Manufacturers, the Business Roundtable, and the Aerospace Industries Association of America, also submitted statements to the Subcommittee on Trade in opposition to the bill due in part to concerns about possible foreign retaliation affecting their export interests.

H.R. 1234 also undermines the independent authority of the U.S. International Trade Commission to determine whether increased imports cause or threaten serious injury to a domestic industry and the President's authority to impose import relief, under the statutory procedures established by the Congress in sections 201-203 of the Trade Act of 1974. H.R. 1234 establishes an unfortunate precedent for other domestic industries with sufficient political clout to seek legislated relief. Further, it invites emulation by foreign governments outside of internationally agreed trading rules to the detriment of U.S. export trade and American jobs.

Finally, the Committee disagrees with the argument that the bill would give our trade negotiators leverage in their efforts to seek the reduction of trade barriers maintained by our trading partners in the automobile sector. The Committee notes this bill would become a permanent feature of our laws once enacted. Action on the part of our trading partners to reduce trade barriers would not improve treatment of these countries under the local content scheme. Therefore, the bill provides no incentive for other countries to eliminate their own protective measures. The Committee believes that this bill would only make the task of our negotiators more difficult and, in fact, our trade negotiators strongly supported this view during the Subcommittee on Trade's hearings.

Thus, aside from the negative economic implications of the bill, the most serious consequences of legislating domestic content requirements are for U.S. trade policy and the international trading system.

Administrative burden

A final argument against this bill which has been addressed is the administrative burdens that a local content scheme would create for everyone involved in the automobile industry, both in the public and private sectors. H.R. 1234 imposes very burdensome recordkeeping and information requirements on domestic automakers. The workload of both government and industry in computing and verifying domestic content ratios for the manufacturers would be involved in this process. So would the 40,000 or more firms in the supplier network who often supply more than one manufacturer and use imported parts and materials themselves.

The paperwork, data collection, and recordkeeping required to make this system work would represent a turnaround from the deregulation and reduced unnecessary presence of our government in the automobile industry and supply chain. The Committee also notes that a recent study by the agency charged with implementing the bill—Department of Transportation—has estimated that its enforcement bureaucracy would need to employ 120 permanent workers and cost over \$10 million a year.

Conclusion

Although adversely reporting the domestic content bill, the Committee continues to be concerned about the continued high levels of unemployment in the auto industry as well as in the economy in general. Moreover, the Committee recognizes that American industries today are faced with intensified worldwide competition and that trading partners often have substantial labor cost, tax and exchange rate advantages over our industries. However, to focus only on the trade aspects of the problems facing the U.S. automobile industry would be to address only one small portion of the problem. That would be a disservice to all sectors of our economy.

The real issue in H.R. 1234 is the efficiency and international competitiveness of the domestic auto industry—and this bill would not improve either. In fact, as the General Motors Corporation noted in its statement opposing the bill, the bill would actually curtail industry flexibility to modernize and cut costs:

Rather, we continue to believe that the domestic auto industry can and should solve its problems in the marketplace. The discipline of having to compete constantly for the business of American consumers is absolutely necessary to insuring the long term health of our industry. As recent years have amply demonstrated, the demands of the marketplace lead us to re-business strategies and upgrade our machinery and plants think our managerial practices, reduce our costs, develop new business strategies and upgrade our machinery and plants. . . . To attempt to curtail industry flexibility, through such measures as H.R. 1234, in the face of intensifying worldwide competition would weaken the U.S. economy.

In sum, the Committee strongly believes that there are more constructive approaches to deal with unfair international trade practices—such as improving and expediting the U.S. trade remedy laws and reauthorizing trade adjustment assistance programs. The economic and policy costs do not warrant passage of legislation which does not address or remedy the real problems of the U.S. automobile industry.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(1) (2) (B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. H.R. 1234 was ordered adversely reported by the Committee by a voice vote.

COST ESTIMATE AND INFLATIONARY IMPACT STATEMENT

With respect to clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee states that the cost of H.R. 1234 as estimated by the Congressional Budget Office for the Committee on Energy and Commerce (H. Rpt. 98-287, Part I, pages 33 and 34) includes salaries and expenses for the newly created U.S. Automobile Industry Advisory Council of approximately \$450,000 and expenses for studies required by the Department of Transportation of approximately \$500,000 annually.

With respect to clause 2(1) (4) of rule XI of the Rules of the House of Representatives, the Committee states that the budgetary costs of H.R. 1234 would not have an inflationary impact on the economy. However, the Committee believes that the reduction in imports, resulting from imposition of domestic content requirements under H.R. 1234, would have an inflationary impact on automobile prices.

